Local 687, Michigan Regional Council of Carpenters (Convention & Show Services, Inc.) *and* Michael Johnston. Case 7–CB–15293

July 31, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On December 27, 2007, Administrative Law Judge Paul Bogas issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief. The General Counsel also filed a cross-exception and supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board[1] has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 687, Michigan Regional Council of Carpenters, Detroit, Michigan, its officers, agents, and representatives shall take the action set forth in the Order.

Dated, Washington, D.C. July 31, 2008

Peter C. Schaumber, Chairman

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3 (b) of the Act.

[2] The General Counsel urges that the Board's "current practice of awarding only simple interest on backpay and other monetary awards be replaced with the practice of compounding interest." Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. *Tech Valley Printing, Inc.,* 352 NLRB No. 81 fn. 5 (2008), citing *Rogers Corp*., 344 NLRB 504 (2005).

Judith A. Champa, Esq., for the General Counsel.
Jeffrey D. Wilson, Esq. and *Dennis M. Devaney, Esq. (Strobl & Sharp, P.C.),* of Bloomfield Hills, Michigan, and *Nicholas R. Nahat, Esq. (Novara Tesija & McGuire, P.L.L.C.),* of Southfield, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

PAUL BOGAS, Administrative Law Judge. This case was tried in Detroit, Michigan, on October 22, 2007. Michael Johnston, an individual, filed the original charge on August 9, 2006, and an amended charge on September 28, 2006. The Regional Director of Region 7 of the National Labor Relations Board (the Board) issued the complaint and notice of hearing on February 9, 2007. The complaint alleges that Local 687, Michigan Regional Council of Carpenters (the Respondent) violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) in the operation of its nonexclusive hiring hall by maintaining written referral procedures that discriminate against members who refrain from engaging in Respondent-sponsored picketing and other protected activity. The Respondent filed a timely answer in which it denied having committed any of the violations alleged in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following findings of fact and conclusions of law

FINDINGS OF FACT

I. JURISDICTION

Convention & Show Services, Inc., a corporation, is an exposition contractor with a place of business in Detroit, Michigan. It annually derives gross revenues in excess of $500,000 and purchases and receives at its Michigan facility, goods and supplies valued in excess of $50,000 directly from points outside the State of Michigan. The Respondent admits, and I find, that Convention & Show Services is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits and I find that it is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Respondent's Referral Procedures

The Respondent is a labor organization with an office and place of business in Detroit, Michigan. It operates a hiring hall from which it refers out-of-work members to contracting employers, including Convention & Show Services, Inc. The contracts between the Respondent and those employers provide that the Respondent is a nonexclusive source of referrals—meaning that the Respondent's members may seek jobs with, and potentially be hired by, any employer without being re-

ferred by the Respondent. The Respondent, and its membership, acted in 1996 and again in April 2007, to ratify and maintain written procedures that govern these referrals. Under those procedures, an out-of-work member who wants to be referred by the Respondent registers by completing and submitting a card. The Respondent numbers those cards consecutively, in the order they are received, and places them in the "out-of-work box." When an employer asks the Respondent to refer an individual or individuals, the Respondent will generally begin by offering the referral to the qualified individual with the lowest number in the out-of-work box, and then will proceed to the qualified individual with the next lowest number, and so on, until the number of workers requested by the employer has been reached. Members who work a specified number of hours after submitting a card are no longer considered to be out-of-work and their cards are removed from the box. If such individuals want to be referred in the future, they must reregister and obtain a new out-of-work number.

The written referral procedures create a few significant exceptions to the general procedure of offering referrals to qualified members in the order that their cards entered the out-of-work box. The complaint alleges that two of the exceptions are unlawful. The challenged exceptions modify the consecutive referral procedures based on a member's participation in, or refusal to participate in, Respondent-sponsored picketing and other protected activity. Those exceptions state as follows:

> Paragraph 4(c). Refusal to participate in organized activities such as picketing, hand billing, etc. will also qualify for removal [from the out-of-work box].
>
> Paragraph 7. Except for referrals under agreements which establish that the Local Union is to be the exclusive source of employment, the out-of-work box shall be used to call individuals for picket duty and individuals who are serving as pickets shall be granted first preference on referrals to available employment in the order that they are in the out-of-work box.

The Respondent maintained and enforced paragraph 7 starting no later than February 9, 2006. On about March 1, 2007, after the complaint in this case issued, the Respondent ceased enforcement of paragraph 7. The Respondent has not enforced the other challenged provision—paragraph 4(c)—for at least the past 5 years, and the record does not show that that paragraph was ever enforced. However, the Respondent has not removed either of the challenged provisions from the written procedures. In the past, copies of the written procedures were posted at the referral hall and those written procedures are currently available in the Detroit office of the Michigan Regional Council of Carpenters (MRCC), the Respondent's governing body.[1] There are 10 other locals operating under the auspices of the MRCC, and all of those locals have ratified the referral procedures.

For over 5 years, Nick McCreary, an agent of the Respondent,[2] has been the person with responsibility for operating the Respondent's out-of-work referral system. McCreary, the only witness in this case, credibly testified about the operation of that system. He stated that, on average, there are about 500 individuals with cards in the out-of-work box,[3] of whom about 100 are picketers. The cards of members who engage in Respondent-sponsored picketing are moved to the front of the out-of-work box. When an employer asks the Respondent to refer potential employees, McCreary begins by offering the referrals to qualified picketers with cards in the out-of-work box, without regard to whether there is a qualified nonpicketer who has been out-of-work longer and holds the next referral number.[4] The Respondent only extends referral offers to the nonpicketers if there are not enough qualified picketers to satisfy the employer's request. In most cases, all of the persons referred by the Respondent are picketers. According to McCreary, approximately 80 to 85 percent of the time the Respondent finds enough persons to refer from among the qualified picketers and does not reach the nonpicketers with cards in the out-of-work box. Although paragraph 7 of the referral procedure states that picketing employees "shall be granted first preference on referrals to available employment in the order that they are in the out-of-work box," McCreary testified that, in practice, the Respondent refers individuals who have been engaging in a great deal of picketing over picketers who would have priority based on their referral numbers, but who have not picketed as much. Once a picketer obtains work using the picketing preference, the preference is extinguished, and the next time the individual seeks a job referral, he or she must engage in picketing again in order to obtain a preference. During McCreary's tenure operating the referral system he has never exhausted the cards in the out-of-work box, meaning that there have always been more members waiting for referrals than there have been available referrals.

Contracting employers have the right to refuse employment to persons referred by the Respondent. However, approximately 90 percent of the time the employers hire the referred individuals and retain them for the full term of the project. Even when a contracting employer refuses employment to a referred individual, that employer is required to pay the rejected individual for 2 hours work.

B. The Complaint

The complaint alleges that, since about February 9, 2006, the Respondent has violated Section 8(b)(1)(A) of the Act in the

[1] Other, unchallenged, portions of the referral rules provide that the Respondent may offer referrals without regard to numerical order when placing a union steward or when an employer makes a written request for a particular individual. There was also testimony that some employers supply the Respondent with "do not hire lists," and that the Respondent will not refer an individual to an employer who has placed that individual on such a list, regardless of whether that individual is the next qualified member in the out-of-work box.

[2] In the answer to the complaint, the Respondent admitted that McCreary was its agent within the meaning of Section 2(13) of the Act.

[3] McCreary testified that the number varies over time. At the time of trial, the number of cards in the out-of-work box had swelled to about 700, but at other times the number of cards has dropped to as low as 200.

[4] McCreary makes these offers by phone. Approximately 70 percent of the time that he calls someone to offer a referral, that individual is not present and does not return the call in time to obtain the referral. This failed-contact rate is the same for picketers and nonpicketers.

operation of its nonexclusive hiring hall by maintaining written employment referral procedures that grant priority to its members who engage in Respondent-sponsored picketing, and withhold referrals from its members who refuse to engage in such picketing, for the purpose of encouraging members to engage in protected activities on behalf of the Respondent and to discourage members from exercising their Section 7 right to refrain from engaging in such activities.

III. ANALYSIS AND DISCUSSION

The Board has held that a union violates Section 8(b)(1)(A) of the Act in the operation of a nonexclusive hiring hall when it discriminatorily denies referrals to members because those members have engaged in activities protected by Section 7 of the Act. *Carpenters Local 370 (Eastern Contractors Assn.)*, 332 NLRB 174 (2000); *Newspaper & Mail Deliverers (City & Suburban Delivery)*, 332 NLRB 870, 870 fn.1 (2000); *Carpenters Local 626 (Strawbridge & Clothier)*, 310 NLRB 500, 500 fn. 2 (1993), enfd. mem. 16 F.3d 404 (3d Cir. 1993); *Laborers Local 135 (Bechtel Corp.)*, 271 NLRB 777, 780 (1984), enfd. 782 F.2d 1030 (3d Cir. 1986) (Table). Such discrimination is unlawfully coercive in the context of nonexclusive hiring halls, despite the fact that the coercion is greater when the discriminating union is party to an exclusive hiring arrangement. *Teamsters Local 923 (Yellow Cab Co.)*, 172 NLRB 2137, 2138 (1968).[5] The protections provided by Section 7 extend not only to a member's decision to participate in union activities, but also to a member's decision to *refrain* from union activities, including union-sponsored picketing. *Service Employees District 1199 (Staten Island University Hospital)*, 339 NLRB 1059, 1060–1061 (2003); *District 65, Distributive Workers (Blume Associates, Inc.),* 214 NLRB 1059 (1974); see also *Service Employees Local 87 (Able Building Maintenance Co.)*, 349 NLRB No. 40, slip op. at 5 (2007) ("An essential element of any violation of Section 8(b)(1) is restraint or coercion in the exercise of a Section 7 right; i.e., the right to form, join, or assist a labor organization, or to refrain from such activity.").

The record establishes that the Respondent ratified and maintained written procedures stating that individuals who refuse to engage "in organized activities such as picketing, hand billing, etc.," qualify for removal from consideration for job referrals and that individuals who do participate in Respondent-sponsored picketing will be granted first preference for receiving job referrals. For a number of years, the Respondent gave effect to the preference for picketers, and only ceased to do so after the Board issued the complaint in this case. The challenged job referral procedures explicitly discriminate against members who exercise their Section 7 rights to refrain from Respondent-sponsored picketing, and therefore those procedures violate Section 8(b)(1)(A).

The Respondent offers a number of arguments for why this discrimination based on participation in picketing activity should not be considered a violation of the Act. First, it argues that the cases holding that discrimination in referrals from nonexclusive hiring halls violate the Act are inapplicable here because those cases involve discrimination against a particular dissident union member, whereas this case involves the grant of a preference to a group of individuals. According to the Respondent, the first of those situations is of a "completely different character" from the second. The Respondent contends that absent discrimination targeting a particular individual, the manner of referral by unions has not been regulated by the Board in the context of nonexclusive hiring halls. Respondent Br. at 6–7. The Respondent has not shown that this distinction is recognized by the Board or the Courts and, in my view, the distinction is not a meaningful one. By referring picketers who would not have received the referrals except for the preference, the Respondent is denying referrals to qualified non-picketers who have been waiting longer and thus possess lower referral numbers. To put it another way, when the Respondent is parceling out a limited number of job referrals to a larger number of members, it cannot reward some for engaging in picketing activity without punishing others for exercising their Section 7 rights to refrain from such activity. Indeed, the evidence showed that the Respondent's preference for picketers has meant that the first 80 to 85 percent of referrals go to qualified picketers without any of the nonpicketing members even being considered. This is true despite the fact that the picketers comprise only about 20 percent of the members awaiting referral. Obviously a referral procedure that has the effect of reserving the first 80 to 85 percent of job referrals for picketers will tend to coerce members' decisions about whether to engage in picketing. The procedure is discriminatory and falls outside a union's prerogatives in the operation of a nonexclusive hiring hall regardless of whether one casts the Respondent's subjective motivation as rewarding picketers or as punishing nonpicketers. See *Service Employees Local 1107 (Sunrise Hospital)*, 347 NLRB 63, 65 (2006), citing *Boilermakers Local 686 (Boiler Tube)*, 267 NLRB 1056, 1057 (1983) (Where a union interferes with a member's Section 7 right to refrain from union activity, Section 8(b)(1)(A) does not require a showing of motivation or intent to establish a violation.).

I reject the Respondent's suggestion that discrimination in referrals at a nonexclusive hiring hall is only unlawful when it targets a specific individual, not a group of individuals. The Respondent provides no authority to support this proposition, and I am not surprised. A union's discrimination based on members' exercise of their Section 7 rights is not made any more palatable by the fact that it punishes a large number of members, rather than a select few. Moreover, the condemna-

[5] The Respondent cites *Teamsters Local 460 (Superior Asphalt)*, 300 NLRB 441 (1990), for the proposition that "absent an exclusive hiring hall arrangement, a union's failure to operate its hiring hall in accordance with objective criteria is not a violation of the Act" since "a union operating a nonexclusive hiring procedure lacks the power to put jobs out of the reach of workers." R. Br. at 6. Although in that case the Board held that a union has no duty of fair representation in the nonexclusive hiring hall setting, the Board explicitly stated that *discrimination* in referrals at a nonexclusive hall is still a violation of Sec. 8(b)(1)(A). 300 NLRB at 441 fn. 1 (A union operating a nonexclusive hiring hall violates Sec. 8(b)(1)(A) when it "denies a member a referral in retaliation for the employees' participation in protected activity."); see also *Newspaper & Mail Deliverers (City & Suburban Delivery)*, 332 NLRB at 870 fn. 1 (even though union has no duty of fair representation in the operation of a nonexclusive referral system, the union violates Sec. 8(b)(1)(A) when it refuses to refer individuals in retaliation for their protected activity).

tion of such discrimination in the distribution of job opportunities has not been limited to instances when the Section 7 activity involved a member's intraunion dissidence or political activity, but rather has extended to circumstances in which the refusal to refer is based on legitimate union interests. See, e.g., *Newspaper & Mail Deliverers (City & Suburban Delivery)*, 332 NLRB 870, 870 fn. 1 and 876 (assuming referral system is nonexclusive, union violates Section 8(b)(1)(A) by refusing to recommend members for employment because those members refrained from participation in a strike).[6]

The Respondent argues that one of the two referral provisions at issue—paragraph 4(c)—can be interpreted to apply to activities not covered by Section 7 and, in any case, has not been enforced. As set forth above, paragraph 4(c) states that an individual qualifies for removal from the out-of-work referral system if he or she "refus[es] to participate in organized activities such as picketing, hand billing, etc." The Respondent contends that this provision can apply to Respondent-organized activities, such as charitable events, which do not implicate Section 7 rights. Even assuming that the provision can be interpreted to reach some unprotected activity, that would not change the fact that it explicitly reaches other activity, such as refusal to participate in picketing, which is undoubtedly protected by Section 7. Such coercion is unlawful regardless of whether the provision also has lawful applications. The Respondent's defense that it did not enforce paragraph 4(c), is also not viable. The mere existence of a rule that improperly discriminates on the basis of a member's protected activity has a chilling effect on the exercise of Section 7 rights, and violates Section 8(b)(1)(A) regardless of whether the provision has ever been enforced. *Awrey Bakeries,* 335 NLRB 138, 139–140 (2001), enfd. 59 Fed. Appx. 690 (6th Cir. 2003); *Engineers & Scientists Guild (Lockheed-California)*, 268 NLRB 311 (1983).

In its brief, the Respondent also contends that the challenged referral policies were implemented by the MRCC, and applied by MRCC business representative McCreary, not by the Respondent (identified in the complaint as "Local 687, MRCC"). Accordingly, it argues, no violation by the Respondent has been established. I conclude that this defense is precluded by the answer to the complaint, in which the Respondent admitted that it "maintained" the challenged referral procedures in "the operation of its nonexclusive hiring hall," and that McCreary was its agent within the meaning of Section 2(13) of the Act. The Respondent never moved to amend its answer in either of those two respects. Moreover, the evidence showed that, in fact, the Respondent acted to accept and maintain the unlawful referral rules on two occasions, most recently in April 2007. Thus, whatever the involvement of the MRCC as a discrete entity, the Respondent itself adopted and maintained the unlawful referral procedures that its agent, McCreary, enforced at its hiring hall.

[6] As the General Counsel recognizes, in the context of "conduct that the union can regulate internally in furtherance of legitimate union interests" discrimination may be permissible if it does not "affect[ ] members' employment opportunities based on Section 7 considerations." GC Br. at 14. The Respondent's discrimination in the distribution of employment referrals, however, affects members' employment opportunities.

CONCLUSIONS OF LAW

1. The Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
3. Since February 9, 2006, the Respondent violated Section 8(b)(1)(A) of the Act in the operation of its nonexclusive hiring hall by maintaining written referral procedures that discriminate against members who refrain from engaging in Respondent-sponsored picketing and other protected activities.

REMEDY

Much of the briefing in this case concerns the question of whether make-whole relief—and in particular backpay—is an appropriate remedy. The complaint seeks the conventional make-whole remedy, but the Respondent contends that such a remedy is not available. First, the Respondent argues that backpay may not be awarded because the General Counsel only alleges a violation of Section 8(b)(1)(A), not Section 8(b)(2). This argument is contrary to controlling Board precedent, which holds that backpay is an appropriate remedy for violations of Section 8(b)(1)(A). *Development Consultants*, 300 NLRB 479, 480 (1990); *Laborers Local 135 (Bechtel Corp.)*, 271 NLRB at 780.[7] Similarly, the Respondent argues that make-whole relief is not available given that the hiring hall was nonexclusive and therefore the discriminatory preference in referrals did not mean that members were "prohibited from going directly to the contractors themselves." This argument is precluded by Board decisions stating that backpay is the proper remedy when a union unlawfully denies members referrals based on discriminatory reasons, even if the hiring hall is nonexclusive. Id. The opportunities that discriminatees had to find employment without the assistance of the Respondent may be addressed when interim earnings and mitigation efforts are considered in a compliance proceeding.

The Respondent also contends that an award of make-whole relief would be improper because the General Counsel "did not present any evidence that members were passed over for a referral," and a make-whole remedy would be "purely speculative." R. Br. at 9. This contention is contrary to the facts. McCreary's testimony made clear that the unlawful preference for picketers meant that he passed over qualified members who had been registered in the out-of-work system longer, and had lower referral numbers, in order to grant priority to qualified picketers. The evidence showed that, given the unlawful preference for picketers, the Respondent awarded the first 80 to 85

[7] The Respondent suggests that the General Counsel is improperly attempting an "end run around" the established proof requirements by alleging a violation of Sec. 8(b)(1)(A), rather than Sec. 8(b)(2). R. Br. at 9. However, the Board has stated that Sec. 8(b)(1)(A)—not Sec. 8(b)(2)—is the appropriate provision for consideration of allegations of union discrimination in the operation of a hiring hall where, as here, the hiring hall is nonexclusive. *Carpenters Local 626*, 310 NLRB at 500; *Development Consultants*, 300 NLRB at 480. A union violates Sec. 8(b)(2) when it discriminates in the operation of an exclusive hiring hall or when it causes an employer to discriminate against employees. Id. Thus the General Counsel and the complaint invoke the appropriate provision.

percent of job referrals to picketers without even considering a single nonpicketer. This was true despite the fact that the picketers were a minority—only 20 percent—of the members awaiting referrals. Thus the nexus between the unlawful preference and the denial of job referrals to non-picketers is anything but speculative. It is true that the record does not identify specific nonpicketers to whom the referrals were discriminatorily denied. However, the Board has held that in cases involving a union's unlawful failure to refer members it is appropriate to defer to compliance the question of who is in the class of victims. *Electrical Workers Local 48 (Oregon-Columbia Chapter of NECA)*, 342 NLRB 101, 109 (2004); *Electrical Workers Local 724 (Albany Electrical Contractors Assn.)*, 327 NLRB 730 (1999); *Electrical Workers Local 6 (San Francisco Electrical Contractors)*, 318 NLRB 109, 142–143 (1995), enfd. mem. 139 F.3d 906 (9th Cir. 1998).

The Respondent also argues that an order for make-whole relief would be unduly speculative because contracting employers were not required to hire the persons who the Respondent referred. This argument is specious. The contracting employers were required to pay each referred member for a minimum of 2 hours work, regardless of whether the employer chose to hire that individual or not. Thus nonpicketers who were discriminatorily denied referrals lost, at a minimum, the 2-hours pay that would have been guaranteed to them had they been referred by the Respondent. Moreover, since the contracting employers hired 90 percent of those referred by the Respondent, the losses suffered by persons who were discriminatorily denied referrals was generally much greater than the 2-hour minimum. Given the evidence presented in this case, I conclude that the Respondent's contention that the loss of earnings resulting from the discrimination was unduly speculative is without merit.

The Respondent relies on the decision of the United States Supreme Court in *Sure-Tan*, 467 U.S. 883 (1983), to support its argument that the Board's conventional make-whole remedy is too speculative in this case. That reliance is misplaced. The remedy that was invalidated in *Sure-Tan* set a minimum backpay entitlement in lieu of the calculation of discriminatees' actual losses. The General Counsel is not seeking such a remedy here, but rather requests the conventional remedy under which backpay will only be provided for actual losses that are calculated in a subsequent compliance proceeding. In *Sure-Tan*, the Court not only did not preclude the conventional remedy as too speculative, but explicitly approved of it. 467 U.S. at 902 ("We generally approve . . . the conventional remedy of reinstatement with backpay, leaving until the compliance proceedings more specific calculation as to the amounts of backpay, if any, due these employees."). The Respondent's citation to the Board's decision in *Page Litho*, 313 NLRB 960 (1994), is similarly unpersuasive. In that case, the respondent was an employer that violated Section 8(a)(5) by unilaterally ceasing to provide a union with notification of job openings. The General Counsel sought backpay and the Board denied the request based on the absence of discrimination, the nonexclusive nature of the hiring arrangement, and the fact that the employer was not required to hire individuals referred by the union. The Board explicitly distinguished cases, such as the instant one, in which backpay is appropriate because a union discriminated in the operation of its nonexclusive hiring hall. Id. at 962, discussing *Development Consultants*, supra. In the instant case, not only was the denial of referrals discriminatory, but when a discriminatee was denied such a referral he or she lost at least the guaranteed minimum 2-hours pay. Thus the decisions, such as *Development Consultants*, 300 NLRB at 480, and *Laborers Local 135 (Bechtel Corp.)*, 271 NLRB at 780, which provide that backpay is an appropriate remedy for a union's unlawful discrimination in the operation of a nonexclusive hiring hall, are controlling here, not *Page Litho*.

The General Counsel urges that the Board's "current practice of awarding only simple interest on backpay and other monetary awards be replaced with the practice of compounding interest." General Counsel Brief at 24. The Board has considered, and rejected, this argument for a change in its practice. See *Rogers Corp.*, 344 NLRB 504 (2005), citing *Commercial Erectors, Inc.*, 342 NLRB 940 fn. 1 (2004), and *Accurate Wire Harness*, 335 NLRB 1096 fn. 1 (2001), enfd. 86 Fed. Appx. 815 (6th Cir. 2003). If the General Counsel's argument in favor of compounding interest has merits, those merits are for the Board to consider, not me. I am bound to follow Board precedent on the subject. See *Hebert Industrial Insulation Corp.*, 312 NLRB 602, 608 (1993). *Lumber & Mill Employers Assn.*, 265 NLRB 199 fn. 2 (1982), enfd. 736 F.2d 507 (9th Cir. 1984), cert. denied 469 U.S. 934 (1984); *Los Angeles New Hospital*, 244 NLRB 960, 962 fn. 4 (1979), enfd. 640 F.2d 1017 (9th Cir. 1981).

Having found that the Respondent violated the Act as alleged in the complaint, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that paragraphs 4(c) and 7 of the Respondent's written out-of-work referral procedures unlawfully discriminate against members on the basis of their Section 7 activity, those paragraphs must be rescinded and stricken from the Respondent's written referral procedures. The Respondent must also refrain from maintaining or enforcing those provisions or in any other way considering a member's participation in picketing activity sponsored by the Respondent when distributing job referrals to members. The Respondent, having discriminatorily denied job referrals to members, must make all discriminatees whole for any resulting loss of earnings and other benefits, computed on a quarterly basis, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.[8]

ORDER

The Respondent, Local 687, Michigan Regional Council of Carpenters, Detroit, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Maintaining, enforcing, and/or giving effect to written job referral procedures that grant priority or preference to members who engage in picketing that is sponsored or sanctioned by the Respondent, and which withhold referrals from members who refuse to engage in picketing and other protected activity.

(b) Giving any consideration to members' participation in, or failure to participate in, Respondent-sponsored or sanctioned picketing when offering job referrals to members.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind, and strike from its written job referral procedures, the provisions that grant priority job referrals to members who engage in picketing sponsored or sanctioned by the Respondent, and which withhold referrals from members who refuse to engage in picketing and other protected activity.

(b) Make whole members for any loss of earnings and benefits they may have suffered, as a result of the Respondent's discrimination against them since February 9, 2006, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all hiring hall records, all documentation regarding the Respondent's referral of members for employment, all documentation regarding compensation and employment obtained by members, all documents reporting or recording the participation of members in Respondent-sponsored picketing, all referral cards, and any other documents, including an electronic copy of such records if stored in electronic form, necessary to identify those who suffered loss of employment because of the violations found herein and/or to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its union office and hiring hall in Detroit, Michigan, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members or applicants for referral are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 27, 2007

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain, enforce, or give effect to job referral procedures that give priority or preference to members who engage in picketing that we sponsor or sanction, and which withhold referrals from members who refuse to engage in picketing and other protected activity.

WE WILL NOT give any consideration to whether you have participated in, or refrained from participation in, picketing that we sponsored or sanctioned when offering job referrals to members.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind, and strike from our written job referral procedures, provisions that grant priority job referrals to members who engage in picketing that we sponsor or sanction, and which withhold referrals from members who refuse to engage in picketing and other protected activity.

WE WILL make you whole for any loss of earnings and benefits that you may have suffered as a result of our discrimination since February 9, 2006, with interest.

LOCAL 687, MICHIGAN REGIONAL COUNCIL OF CARPENTERS